

STATE OF MICHIGAN  
COURT OF APPEALS

---

HUNTERS SQUARE OFFICE BUILDING,

Plaintiff-Appellant,

v

MICHIGAN BELL TELEPHONE COMPANY,  
a/k/a AT&T-MICHIGAN,

Defendant-Appellee.

---

UNPUBLISHED

October 1, 2009

No. 286180

Oakland Circuit Court

LC No. 2007-087577-CH

Before: Murphy, P.J., and Meter and Beckering, JJ.

PER CURIAM.

In this action arising out of defendant's alleged trespass upon plaintiff's property, plaintiff appeals as of right the trial court's order, entered pursuant to MCR 2.116(C)(10), granting summary disposition in favor of defendant and denying plaintiff's motion for summary disposition. We reverse and remand for further proceedings. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This action involves the question whether defendant trespassed on plaintiff's property in connection with the installation of a new underground cable that defendant attached to an existing crossbox cabinet. Resolution of the issue necessarily requires interpretation of an easement agreement executed by plaintiff and defendant in settlement of previous litigation engaged in by the parties. Plaintiff argues that defendant exceeded the scope of the easement by its placement of the new underground cable, thereby committing a trespass, but defendant maintains that the easement agreement provided it the right to connect the new cable to the cabinet. At the time the easement was granted, there were two existing underground cables attached to the crossbox cabinet that ran through the westerly twenty feet of plaintiff's property. The trial court agreed with defendant that the easement agreement permitted the installation of the new underground cable.

An easement is an interest in land. *Lakeside Oakland Dev, LC v H & J Beef Co*, 249 Mich App 517, 525; 644 NW2d 765 (2002). In *Schadewald v Brulé*, 225 Mich App 26, 35; 570 NW2d 788 (1997), this Court enunciated some basic principles regarding easements:

An easement is the right to use the land of another for a specified purpose. An easement does not displace the general possession of the land by its owner, but merely grants the holder of the easement qualified possession only to the

extent necessary for enjoyment of the rights conferred by the easement.  
[Citations omitted.]

The scope of an easement is strictly confined to the purposes for which it was granted or reserved. *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 41; 700 NW2d 364 (2005).

“The extent of a party’s rights under an easement is a question of fact, and a trial court’s determination of those facts is reviewed for clear error.” *Id.* at 40. However, a trial court’s dispositional ruling on an equitable matter and a court’s decision on a motion for summary disposition are reviewed de novo on appeal. *Id.* Furthermore, “[q]uestions involving the proper interpretation of a contract or the legal effect of a contractual clause are also reviewed de novo.” *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008).

In *Little v Kin*, 468 Mich 699, 700; 664 NW2d 749 (2003), our Supreme Court, discussing the manner in which a court should proceed in analyzing the scope of an easement, stated:

First, the trial court must determine whether the easement contemplates the construction and maintenance of a dock by defendants. In answering this question, the trial court shall begin by examining the text of the easement. Where the language of a legal instrument is plain and unambiguous, it is to be enforced as written and no further inquiry is permitted. If the text of the easement is ambiguous, extrinsic evidence may be considered by the trial court in order to determine the scope of the easement. [Citation omitted.]

When a contract is ambiguous and its meaning obscure, construction of the contract depends on other and extrinsic facts in connection with what was written, requiring a factual determination by the trier of fact relative to the parties’ intent in entering the contract. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 469; 663 NW2d 447 (2003) (fact-finder must interpret an ambiguous contract in light of the apparent purpose of the agreement as a whole, the rules of contract construction, and extrinsic evidence of intent and meaning).

Here, the easement agreement that the parties had executed relative to the prior lawsuit provides, in pertinent part:

[G]rantor, hereby warrants, grants, and conveys to . . . Grantee . . . an easement to reconstruct, maintain, operate, and/or remove only those communication facilities and related equipment and appurtenances constructed and in place as of this date, with the right of ingress and egress for the purposes of this grant, in, under, upon, over and across the Westerly 20 feet of property . . . .

SAID EASEMENT to be located and described as follows:

3 (three) feet on each side of Grantee’s existing facilities as located within and not to exceed the Westerly 20 feet of the above described property.

The trial court determined that the easement agreement permitted the installation of the additional underground cable in the ingress and egress area. The trial court reasoned:

The Court finds that although the Easement Agreement prevents Defendant from installing another crossbox cabinet on Plaintiff's property, it does not limit Defendant's right of ingress and egress for installing underground cables as long as Defendant restores the property disturbed by its construction. Under the clear and unambiguous terms of the Easement Agreement, Defendant had the right to install additional underground cables within the Westerly 20 feet of the property. The Court finds that connecting the additional cables to the existing crossbox does not exceed the scope of the Easement agreement. Because there is no evidence to dispute Defendant's assertion that the additional cable was placed with the Westerly 20 feet of the property and no evidence that Defendant did not restore the property disturbed by the construction, the Court finds that Defendant is entitled to summary disposition.

As indicated, the trial court found that the easement agreement was clear and unambiguous. We disagree. Our careful examination of the agreement's language, made in conjunction with the construction arguments presented by the parties, leads us to the conclusion that the easement agreement is ambiguous; the parties present meritorious and reasonable, yet conflicting, interpretations of the language at issue. The easement agreement, on its face, is simply unclear with respect to whether defendant had the right to install a new underground cable, and the matter becomes even murkier when one attempts to pinpoint the language in the agreement that gave defendant the undeniable legal right to keep the two existing cables in place following the previously-resolved dispute. If there is more than one way to reasonably interpret a contract, the contract is ambiguous. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 60; 664 NW2d 776 (2003); *Raska v Farm Bureau Mut Ins Co of Michigan*, 412 Mich 355, 362; 314 NW2d 440 (1982) ("A contract is said to be ambiguous when its words may reasonably be understood in different ways."); *Petovello v Murray*, 139 Mich App 639, 642; 362 NW2d 857 (1984) ("It is a fundamental principle of law that, if the language of a written contract is subject to two or more reasonable interpretations or is inconsistent on its face, the contract is ambiguous, and a factual development is necessary to determine the intent of the parties."). Accordingly, the trial court on remand, while needing to take into consideration the contractual language, must also look outside the four corners of the easement agreement to determine the intent of the parties, including examination of extrinsic evidence. We find it unnecessary to specifically speak to the merits of each of the various interpretations of the easement agreement offered by the parties because, once again, each construction is reasonable and arguable and it would not be proper for us to contemplate and weigh extrinsic evidence on the matter. The trial court erred in finding, as a matter of law on a motion for summary disposition, that the easement agreement clearly and unambiguously, on its face, permitted defendant to attach the new underground cable.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy  
/s/ Patrick M. Meter  
/s/ Jane M. Beckering